

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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336 LLC, d/b/a “The Erotica”, et al.,  
Plaintiffs,

v.

THE CITY OF NEW YORK, et al.,  
Defendants.

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Docket No.  
1:18-cv-3732-LJL

[rel. 1:02-cv-4431-LJL]  
[rel. 1:02-cv-4432-LJL]  
[rel. 1:02-cv-8333-LJL]

DECLARATION OF DANIEL J. ZAZZALI  
IN SUPPORT OF PLAINTIFFS’ MOTIONS FOR  
PARTIAL SUMMARY JUDGMENT

DANIEL J. ZAZZALI hereby declares pursuant to 28 U.S.C. § 1746:

1. I submit this declaration in support of the Bookstore Plaintiffs’ Motion for Partial Summary Judgment. This declaration is based upon personal knowledge, except any facts stated on information and belief.

2. I filed a previous declaration in this action in support of the Bookstore Plaintiffs’ Motion for a Preliminary Injunction (ECF No. 42 at 63). I have been advised that a copy of that declaration will be contemporaneously filed along with this declaration in support of this motion. I have reviewed all the facts stated in my earlier declaration and affirm that, to the best of my knowledge, they are still true except any as noted below.

3. Since my declaration was filed on November 21, 2018, one of our bookstores – Explore DVD, located at 97-06 Queens Boulevard, in Rego Park, Queens – which offered constitutionally protected expression to the public in approximately 15 private viewing booths, closed and no longer is in operation.

4. Our bookstore Gotham Video Sales & Distribution Inc. (“Gotham”), located at 687 Eighth Avenue between West 43<sup>rd</sup> and West 44<sup>th</sup> Streets, remains one of the very few businesses with viewing booths in the Times Square area.

5. Gotham temporarily closed due to the COVID pandemic, in compliance with all relevant governmental orders, but otherwise has continued in uninterrupted operation since it first opened.

6. The world has changed since the 2001 Amendments were enacted more than 20 years ago. In recent years, the internet and other factors significantly impacted the sales of DVDs and tapes from brick-and-mortar stores. Our business is struggling financially. However, there is still considerable demand for viewing erotic films in the anonymity of private viewing booths.

7. Upon information and belief, if the Court allows the City to enforce its mandatory termination provisions, there will only be one 100% adult bookstore in Manhattan. That sole remaining business is a small video store

located at 300 West 40<sup>th</sup> Street, tucked down the stairs to the subway, which does not have any private viewing booths. Thus, if the Court allows the City to enforce its mandatory termination provisions, this will result in the closure of every private viewing booth in Manhattan.

8. I have been in the store at 300 West 40<sup>th</sup> Street. Based on my significant experience, I believe that the installation of booths there would require the management to remove the vast majority of their racks of DVDs. I believe that even with the removal of all DVD racks, at most 15-20 booths could fit within that space.

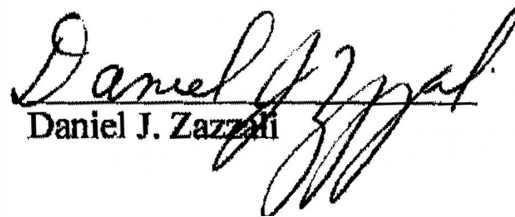
9. Years ago, we had discussions with the store management about possibly installing some booths at that location. We were advised that even if booths could fit in the store, the building owner has forbidden booths from being installed. Furthermore, the store is located on a landing between two flights of stairs to the subway station and is not handicap accessible.

10. If the 2001 Amendments are permitted to take effect and be enforced, and our bookstore is compelled to move from its present location in order to comply therewith, we may wish to relocate. However, we would be unwilling and unable to do so under the regulatory scheme being challenged.

11. I have read and am familiar with the Declaration of Michael Berzak, to be filed with this declaration. For the reasons set forth in that declaration, unless and until the deficiencies in the vesting provisions of the Zoning Resolution are remedied, we would not attempt to open a new bookstore with private viewing booths for adult material at any location not already licensed for adult use.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 12, 2022

  
Daniel J. Zazzali